

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

MICHAEL B. ADKINS; FRANCIS )  
BOGNER; JAYME DEAN BOGNER; )  
SHIPING CHEN; LIJIE SHENG; DAVID )  
DAVISON; CHINHUI DAVISON; )  
TIMOTHY R. DIENHART; GARY )  
KOEHLER; DAVID PETERS; DONNA )  
PETERS; DJ REPPAS VENTURES, INC.; )  
DAVID W. REPPAS; JULIE A. REPPAS; )  
KENDRA SEILER; LANCE SEILER; ERIC )  
ROBERT TAYLOR; KURT WILL; )  
TERRI WILL; and WILLWRITE )  
PRODUCTIONS, INC., )

Plaintiffs )

v. )

MID-AMERICA ENERGY, INC.; )  
MID-AMERICA OIL & GAS, LLC; )  
GARY MILBY; FORT KNOX OIL #8, )  
LLP; FORT KNOX OIL #10, LLP; )  
FORT KNOX OIL #11, LLP; FORT )  
KNOX OIL #12, LLP; and )  
FORT KNOX OIL #14, LLP, )

Defendants )

No. 3:07-0420  
Judge Trauger/Brown

**TO: The Honorable Aleta A. Trauger**

**REPORT AND RECOMMENDATION**

**I. INTRODUCTION**

The Plaintiffs in this case have filed a motion for default judgment as to all Defendants (Docket Entry 22), and the Clerk has now entered default against all Defendants (Docket Entry 23 and 29). The matter has been referred to the undersigned for a report and recommendation on the entry of a default judgment (Docket Entries 24 and 29).

For the reasons stated below, the Magistrate Judge recommends that the Plaintiffs' motion for default judgment against the Defendants (Docket Entry 22) be **GRANTED** and the District Judge enter the judgment against the Defendants as set forth in the proposed order and judgment which are attached to this report and recommendation.

## **I. BACKGROUND**

The Plaintiffs filed a complaint on April 16, 2007 (Docket Entry 1), alleging that they were investors in various companies alleged to be in the oil and gas business and controlled or operated by Gary Milby. The Plaintiffs allege that as investors they invested a total of \$146,500 in various of these companies and that their investment was obtained by fraud committed by Milby. In general, they allege that their money was supposed to be invested in various oil wells and the operations necessary to drill various oil wells. They allege that the money was not spent as promised and that their entire investments have been lost. Service of process was obtained on all of the Defendants and default was entered by the Clerk against all Defendants except Gary Milby on August 2, 2007. Subsequently, the Plaintiffs showed that Mr. Milby was not in military service and default was entered against him on August 6, 2007 (Docket Entry 29).

The undersigned set the matter for a hearing (Docket Entry 30) on August 23, 2007, for the purpose of establishing damages. At the time of the hearing counsel for the Plaintiffs appeared, but none of the Defendants appeared, either in person or through counsel.

At the hearing, counsel for the Plaintiffs advised they wished only to seek damages in the amount alleged in their complaint and that they would forego requests for attorneys' fees, costs, punitive damages and prejudgment interest. They stated that they stood by their previous affidavits and their complaint.

### **III. LEGAL DISCUSSION**

Inasmuch as the Defendants have failed to respond in any way to these proceedings, and in particular to the motion for default judgment, the Court may take the motion as unopposed under the Court's Local Rules. In addition, the Sixth Circuit has held that upon entry of the default, a court may award a judgment based upon well-pled facts in the pleadings. *Smith v. CIR*, 926 F.2d 1470 (6<sup>th</sup> Cir. 1991); *Trice v. Lake and Country Real Estate*, 831 F.2d 1064, 1987 WL 38852 Unpublished Disposition (6<sup>th</sup> Cir. 1987). From the pleadings and the ruling by the Clerk, it now appears that none of the Defendants are infants, incompetent, or in the military service. The Plaintiffs have greatly simplified the Court's job by foregoing the claims for punitive damages and simply requesting judgment in the amount of their investment which they state has been lost. Under these circumstances the Magistrate Judge believes that the Plaintiffs are entitled to judgment in the amount of their stated loss and would further be entitled to post-judgment interest from the date of the entry of the judgment.

### **IV. RECOMMENDATION**

For the reasons stated above, the Magistrate Judge recommends that the Plaintiffs' motion for default judgment against the Defendants (Docket Entry 22) be **GRANTED** and that the District

Judge enter the order and judgment which are **attached** to this report and recommendation.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Judge. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S.Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

**ENTERED** this 29th day of August, 2007.

/s/ Joe B. Brown  
JOE B. BROWN  
United States Magistrate Judge

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O R D E R

This matter having come before this Court on the Motion for Entry of Default Judgment (Docket Entry 22) filed by the Plaintiffs, this Court having considered the motion and record in this case adopts the report and recommendation of the Magistrate Judge and hereby concludes that the motion should be **GRANTED**.

The Court further finds as follows:

A. The Defendants Mid-America Energy, Inc.; Mid-America Oil & Gas, LLC; Gary M. Milby; FORT Knox #8, LLP; Fort Knox #10, LLP; Fort Knox #11, LLP; Fort Knox #12, LLP; and Fort Knox #14, LLP (Defendants) were served by personal service on June 17, 2007.

B. The Defendants failed to respond to or otherwise defend the allegations in the complaint.

C. The Defendants failed to respond to the motion (Docket Entry 22) filed on July 16, 2007.

D. The Plaintiffs are entitled to a default judgment against the Defendants.

E. This case involves rescissory damages in the amount of \$746,500 apparent and calculable according to the complaint.

It is so **ORDERED**.

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ALETA A. TRAUGER  
United States Judge

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**JUDGMENT**

A monetary judgment against the Defendants jointly and severally in the amount of \$746,500.00 plus post-judgment interest, is **GRANTED**.

This Court further **ORDERS, ADJUDGES AND DECREES** that all writs and other process necessary to enforce the judgment contained herein shall issue in favor of the Plaintiffs.

It is so **ORDERED**.

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ALETA A. TRAUGER  
United States Judge